

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. 31311(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

[62 FR 37152, July 11, 1997]

Subpart D—Consequences of State Noncompliance

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following first year of noncompliance.* An amount equal to five percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

§ 384.403 Period of availability; effect of compliance and noncompliance.

(a) *Period of availability—(1) Funds withheld on or before September 30, 1995.* Any funds withheld under this subpart from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this

subpart, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(2) *Funds withheld after September 30, 1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 10 of the last fiscal year for which funds withheld under this subpart from apportionment are to remain available for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in § 384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

PART 385—SAFETY FITNESS PROCEDURES

Sec.

385.1 Purpose and scope.

385.3 Definitions.

§ 385.1

49 CFR Ch. III (10–1–97 Edition)

- 385.5 Safety fitness standard.
- 385.7 Factors to be considered in determining a safety rating.
- 385.9 Determination of a safety rating.
- 385.11 Notification of a safety rating.
- 385.13 Unsatisfactory safety rating—Prohibition on transportation of hazardous materials and passengers.
- 385.15 Request for a change in a safety rating; facts and procedure.
- 385.17 Request for a change in a safety rating; corrective action taken.
- 385.19 Safety fitness information.
- 385.21 Motor carrier identification report.
- 385.23 Failure to report.

APPENDIX A TO PART 385—FORM MCS-150,
MOTOR CARRIER IDENTIFICATION REPORT
APPENDIX B TO PART 385—SAFETY RATING
PROCESS

AUTHORITY: 49 U.S.C. 104, 504, 521(b)(5)(A),
5113, 31136, 31144, 31502; and 49 CFR 1.48.

SOURCE: 53 FR 50968, Dec. 19, 1988, unless
otherwise noted.

§ 385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of “unsatisfactory” from operating a commercial motor vehicle:

(1) To provide transportation of hazardous materials for which vehicle placarding is required in accordance with part 172, subpart F of this title; or

(2) To transport more than 15 passengers, including the driver.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter.

[56 FR 40805, Aug. 16, 1991]

§ 385.3 Definitions.

Applicable safety regulations or requirements means 49 CFR subtitle B, chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, Subchapter C—Hazardous Materials Regulations.

Commercial motor vehicle shall have the same meaning as described in § 390.5 of this subchapter.

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers’ hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes an inspection of selected motor carrier records and operations. It is used to gather information for assigning ratings to unrated carriers. The safety review is not ordinarily employed to gather evidence in support of enforcement actions, but will if certain serious violations are discovered (e.g., absence of proof of financial responsibility; document falsification).

(3) *Safety management controls* means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

Safety ratings: (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in § 385.5 (a) through (h).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (h). Motor carriers receiving an "unsatisfactory safety rating" may be subject to the provisions of § 385.13.

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991]

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (part 383),
- (b) Inadequate levels of financial responsibility (part 387),
- (c) The use of unqualified drivers (part 391),
- (d) Improper use and driving of motor vehicles (part 392),
- (e) Unsafe vehicles operating on the highways (part 393),
- (f) Failure to maintain accident registers and copies of accident reports (part 390),
- (g) The use of fatigued drivers (part 395),
- (h) Inadequate inspection, repair, and maintenance of vehicles (part 396),
- (i) Transportation of hazardous materials, driving and parking rule violations (part 397),
- (j) Violation of hazardous materials regulations (parts 170 through 177), and

(k) Motor vehicle accidents and hazardous materials incidents.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

§ 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.

(d) Number and frequency of out-of-service driver/vehicle violations.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

§ 385.9 Determination of a safety rating.

(a) Following a safety or compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7, shall determine whether the

present operations of the motor carrier are consistent with the safety fitness standard set forth in §385.5, and assign a safety rating accordingly.

(b) Unless otherwise specifically provided in this chapter, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

[53 FR 50968, Dec. 19, 1988, as amended at 62 FR 28809, May 28, 1997]

EFFECTIVE DATE NOTE: At 62 FR 28809, May 28, 1997, in §385.9, the existing text was designated as paragraph (a), and a new paragraph (b) was added, effective May 28, 1997 until Nov. 28, 1997.

§385.11 Notification of a safety rating.

(a) The FHWA shall provide written notification to the motor carrier of the assigned safety rating.

(b) Notification of a “conditional” or “unsatisfactory” rating will include a list of those items for which immediate corrective action must be taken.

(c) A notification of an “unsatisfactory” safety rating will also include a notice that the motor carrier will be subject to the provisions of §385.13, which prohibit motor carriers rated “unsatisfactory” from transporting:

(1) Hazardous materials requiring placarding under part 172, subpart F, of this title; or

(2) 15 or more passengers, including the driver.

[56 FR 40806, Aug. 16, 1991]

§385.13 Unsatisfactory safety rating—Prohibition on transportation of hazardous materials and passengers.

(a)(1) A motor carrier that receives a safety rating from the Federal Highway Administration which is “unsatisfactory” shall have 45 calendar days from the effective date of that rating or from the date of notice of that rating, whichever is later, to take such action as may be necessary to improve such safety rating to “conditional” or “satisfactory.”

(2) *Prohibition on transportation.* After the last day of the 45-day period established pursuant to paragraph (a)(1) of this section and until notification is issued pursuant to this part of either a “conditional” or “satisfactory” safety rating, a motor carrier rated “unsatisfactory” shall be prohibited from operating a commercial motor vehicle to transport—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(3) *Ineligibility for Federal Government transportation.* Any motor carrier that receives a safety rating of “unsatisfactory” shall be ineligible to contract or subcontract with any Federal agency for the transportation of—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(b) *Penalties.* Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions of 49 U.S.C. App. 1809 and 49 U.S.C. 521.

[56 FR 40806, Aug. 16, 1991]

[56 FR 40806, Aug. 16, 1991]

§385.15 Request for a change in a safety rating; facts and procedure.

(a) A petition for review of a safety rating, where there are factual or procedural disputes, must list all issues in dispute and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(b)(1) The petition must be submitted to the Director, Office of Motor Carrier Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(2) Motor carriers affected by the provisions of §385.13 should submit their petitions and supporting documentation to the Director, Office of Motor Carrier Field Operations, within 15 days from the date of notification of the assignment of a safety rating.

(c) As part of the consideration of a petition, the Director, Office of Motor Carrier Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide such data or to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Field Operations, shall notify the motor carrier in writing of a decision

Federal Highway Administration, DOT

§ 385.23

on a petition for review of a safety rating, which will constitute the final agency action. The decision may:

- (1) Confirm the rating; or
- (2) Revise the rating.

[56 FR 40806, Aug. 16, 1991]

§ 385.17 Request for a change in a safety rating; corrective action taken.

(a) A request for a change in a safety rating may be made when the basis for the change is evidence that corrective actions have been taken and that operations currently meet the safety fitness standard specified in § 385.5. The request shall be directed in writing, via certified mail, to the Regional Director of Motor Carriers for the FHWA Region in which the motor carrier maintains its principal place of business for safety. The Regional Office addresses are listed in § 390.27 of this subchapter. Such a request shall include a written description of corrective actions taken and other documentation that may be relied upon as a basis for improving the assigned rating.

(b) The FHWA will make its determination based upon documentation submitted or any additional investigation deemed necessary.

(c) In cases where the FHWA is unable to make a determination within the 45-day period established in § 385.13 and the motor carrier has submitted evidence that corrective actions have been taken pursuant to paragraph (a) of this section, and has cooperated in any investigation, the FHWA may conditionally suspend the effective date of the "unsatisfactory" safety rating for an additional period of up to 10 days.

[56 FR 40806, Aug. 16, 1991, as amended at 61 FR 1843, Jan. 24, 1996]

§ 385.19 Safety fitness information.

(a) Safety rating information on motor carriers will be made available to all Federal agencies telephonically or by remote computer terminals.

(b) The safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier should provide the FHWA with the motor carrier name, principal office address, and the ICC assigned

docket number, or the U.S. DOT identification number.

(c) Requests should be addressed to: OMC—Safety Rating, P.O. Box 13028, Arlington, Virginia 22219.

(d) Oral requests by telephone will be accepted and may be made by calling (703) 276-6876. Oral requests made by telephone will be sent a written response if so requested.

[56 FR 51344, Oct. 11, 1991]

§ 385.21 Motor carrier identification report.

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS-150, within 90 days after the effective date of this rule. Exception: The provisions of this section do not apply to a motor carrier that has received written notification of a safety rating from the FHWA.

(b) All motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS-150, within 90 days after beginning operations.

(c) The Motor Carrier Identification Report, Form MCS-150, is available from all FHWA region and division motor carrier safety offices nationwide and from FHWA Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) The completed Motor Carrier Identification Report, Form MCS-150, shall be filed with the FHWA, Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

§ 385.23 Failure to report.


Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS-150, pursuant to the provisions of § 385.21, or furnishing misleading information or making false statements upon the MCS-150 shall subject the offender to the penalties prescribed in title 49, United States Code, 522(b).

[53 FR 50968, Dec. 19, 1988, as amended at 60 FR 38743, July 28, 1995]

APPENDIX A TO PART 385—FORM MCS-150, MOTOR CARRIER IDENTIFICATION
REPORT

(Approved by OMB under control number 2125-0544)

OMB No. 2125-0544

 U.S. Department of Transportation Federal Highway Administration		MOTOR CARRIER IDENTIFICATION REPORT																																																																	
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12. CARGO CLASSIFICATIONS: <i>(Please circle all that apply)</i> <table border="0" style="width: 100%;"> <tr> <td>A. General Freight</td> <td>H. Mobile Homes</td> <td>O. Livestock</td> <td>V. Commodities Dry Bulk</td> </tr> <tr> <td>B. Household Goods</td> <td>I. Machinery, Large Objects</td> <td>P. Grain, Feed, Hay</td> <td>W. Refrigerated Food</td> </tr> <tr> <td>C. Metal: Sheets, Coils, Rolls</td> <td>J. Fresh Produce</td> <td>Q. Coal/Coke</td> <td>X. Beverages</td> </tr> <tr> <td>D. Motor Vehicles</td> <td>K. Liquids/Gases</td> <td>R. Meat</td> <td>Y. Paper Products</td> </tr> <tr> <td>E. Driveway/Towaway</td> <td>L. Intermodal Containers</td> <td>S. Garbage, Refuse, Trash</td> <td>Z. Other <i>(Specify)</i></td> </tr> <tr> <td>F. Logs, Poles, Beams, Lumber</td> <td>M. Passengers</td> <td>T. U.S. Mail</td> <td></td> </tr> <tr> <td>G. Building Materials</td> <td>N. Oilfield Equipment</td> <td>U. Chemicals</td> <td></td> </tr> </table>							A. General Freight	H. Mobile Homes	O. Livestock	V. Commodities Dry Bulk	B. Household Goods	I. Machinery, Large Objects	P. Grain, Feed, Hay	W. Refrigerated Food	C. Metal: Sheets, Coils, Rolls	J. Fresh Produce	Q. Coal/Coke	X. Beverages	D. Motor Vehicles	K. Liquids/Gases	R. Meat	Y. Paper Products	E. Driveway/Towaway	L. Intermodal Containers	S. Garbage, Refuse, Trash	Z. Other <i>(Specify)</i>	F. Logs, Poles, Beams, Lumber	M. Passengers	T. U.S. Mail		G. Building Materials	N. Oilfield Equipment	U. Chemicals		13. CARRIER OPERATION A. Interstate B. Intrastate Only—HazMat. C. Intrastate Only—Non-HazMat.																																
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17. CERTIFICATION STATEMENT <i>(to be completed by an authorized official)</i> I, _____ <i>(please print name)</i> , certify that I am familiar with the Federal Motor Carrier Safety Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete. Signature _____ Date _____ Title _____																																																																			

Form MCS-150 (7-90)

50-10-1-90

Federal Highway Administration, DOT

Pt. 385, App. A

NOTICE

The Form MCS-150, Motor Carrier Identification Report, must be filed by all motor carriers operating in interstate or foreign commerce. A new motor carrier must file Form MCS-150 within 90 days after beginning operations. Exception: A motor carrier that has received written notification of a safety rating from the Federal Highway Administration (FHWA) need not file the report. To mail, fold the completed report so that the self-addressed postage paid panel is on the outside. This report is required by 49 CFR Part 385 and authorized by 49 U.S.C. 504 (1982 & Supp. III 1985).

The public reporting burden for this collection of information on the Form MCS-150 is estimated by the FHWA to average 20 minutes. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to Office of Management and Budget and the FHWA at the following addresses:

Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503

and

Federal Highway Administration, Office of Motor Carrier Field Operations, HFO-10, 400 7th Street, SW, Washington, DC 20590

INSTRUCTIONS FOR COMPLETING THE MOTOR CARRIER IDENTIFICATION REPORT (MCS-150)

(Please Print or Type All Information)

1. Enter the name of the business entity (i.e. corporation, partnership, or individual) that owns and controls the motor carrier operation.
2. If the business entity is operating under a name other than that in Block 1, i.e. "trade name", enter that name. Otherwise, leave blank.
3. Enter the principal place of business (where all safety records are maintained) street address.
4. Enter the city where the principal place of business is located.
5. Enter the name of the county in which the principal place of business is located.
6. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, in which the principal place of business is located.
7. Enter the zip code number corresponding with the street address.
8. Enter the telephone number including area code of the principal place of business.
9. Enter the motor carrier 'MC' number under which the Interstate Commerce Commission (ICC) issued your operating authority, if appropriate. Otherwise, enter "N/A."
10. Enter the identification number assigned to your motor carrier operation by the

U.S. Department of Transportation, if known. Otherwise, enter "unknown."

11. Circle appropriate classification. Circle all that apply. If F "other" is circled, enter the type of operation in the space provided.
 - A. Authorized For Hire
 - B. Exempt For Hire
 - C. Private
 - D. Migrant
 - E. U.S. Mail
 - F. Other _____

Authorized For Hire— transportation for compensation as a common or contract carrier of property, owned by others, or passengers under the provisions of the ICC.

Exempt For Hire— transportation for compensation of property exempt from the economic regulation by the ICC.

Private— transportation of property, owned or leased by the motor carrier, in furtherance of a commercial enterprise other than for-hire transportation.

Migrant— interstate transportation, including a contract carrier, but not a common carrier of 3 or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

U.S. Mail— transportation of U.S. Mail under contract with the U.S. Postal Service.

12. Circle the letter of the types of cargo you usually transport. If Z "other," is circled enter the name of the commodity in the space provided.
13. Circle the appropriate type of operation.
 - A. Interstate
 - B. Intrastate, transporting hazardous materials (49 CFR 100-178)
 - C. Intrastate, NOT transporting hazardous materials.

Interstate— transportation of persons or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate— transportation of persons or property wholly within one State.
14. Circle the letter of *all* of the types of hazardous materials (HM) you transport. In the columns following the HM types, either circle *T* if the HM is transported in cargo tanks or *P* if the HM is transported in other packages.
15. Enter the total number of vehicles owned, term leased and trip leased, that are, or can be, operational the day this form is completed.
16. Enter the number of drivers used on an average work day. Part-time, casual, term leased, trip leased and company drivers are to be included.

100 mile radius driver— a driver that operates within a *100 air-mile radius* of the normal work reporting location.

17. Print or type the name, in the space provided, of the individual authorized to sign documents on behalf of the entity listed in Block 1. That individual must sign, date, and show his or her title in the spaces provided. (Certification Statement, see 49 CFR 385.21 and 385.23)

[56 FR 5365, Feb. 11, 1991]

APPENDIX B TO PART 385—SAFETY RATING PROCESS

Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Highway Administration (FHWA).

As directed, FHWA promulgated a safety fitness regulation, Safety Fitness Procedures, which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a safety fitness standard which a motor carrier must meet to obtain a *satisfactory* safety rating.

To meet the safety fitness standard, a motor carrier must demonstrate to FHWA that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with the applicable safety requirements. A "safety fitness rating methodology" (SFRM) was developed by FHWA, which uses data from onsite reviews to rate motor carriers.

The safety rating process developed by FHWA's Office of Motor Carriers is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory*, *conditional* or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms with 49 CFR 385.5—Safety fitness standard and §385.7—Factors to be considered in determining a safety rating.
2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

SOURCE OF DATA FOR RATING METHODOLOGY

The FHWA's rating process is built upon the operational tool known as the compliance review (CR). This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

The CR is an in-depth examination of a motor carrier's operations and is used (1) to

rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status and vehicle maintenance records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable preventable accident information is also collected.

CONVERTING CR INFORMATION INTO A SAFETY RATING

The FHWA gathers information through an in-depth examination of the motor carrier's compliance with portions of the FMCSRs and HMRs which have been identified as "acute" or "critical" regulations.

Acute regulations are those so essential that noncompliance is obvious and requires immediate corrective actions by a motor carrier regardless of its overall safety posture. An example of an acute regulation is §383.37(b)—Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with §383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have knowledge or could not reasonably be expected to have knowledge, then a violation would not be cited.

Critical regulations are those which relate directly to management and/or operational controls. Noncompliance with those regulations is indicative of a breakdown in a carrier's management controls. An example of a critical regulation is §395.3(a)(1)—Requiring or permitting a driver to drive more than 10 hours.

The list of the acute and critical regulations used in determining safety ratings is provided at the end of this document.

Noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average rates of recordable preventable accidents. The FHWA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the §385.5—Safety fitness standard. Compliance with the regulatory factors, (1) [Parts 387, & 390]; (2) [Parts 382, 383 & 391]; (3) [Parts 392 & 395]; (4) [Parts 393

& 396, when there are *less* than three vehicle inspections in the last 12 months to evaluate]; and (5) [Parts 397, 171, 177 & 180], will be evaluated as follows:

For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation documented during the CR, one point will be assessed. A pattern is more than one violation. When large numbers of documents are reviewed the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

VEHICLE FACTOR

When there are a combination of *three or more inspections recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review*, the Vehicle Factor (Parts 393 & 396) will be evaluated on the basis of the Out-of-Service (OOS) rate and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34% or greater, the initial factor rating will be *conditional*. The requirements of Part 396—Inspection, Repair, and Maintenance—will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional*.

2. If a carrier's vehicle OOS rate is less than 34%, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain

their vehicles. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396—Inspection, Repair, and Maintenance reviewed as indicated by the above explanation.

ACCIDENT FACTOR

In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable preventable accident rate which the carrier has experienced during the past 12 months. *Recordable preventable accident* means an accident that (1) Involves a commercial motor vehicle; (2) that meets the definition of an accident in §390.5; and (3) that could have been averted but for an act, or failure to act, by the motor carrier or driver. The sixth factor is assigned a rating based on the carrier's recordable preventable accident rate compared to the national accident rate distribution.

To determine this national distribution, recordable preventable accidents per million miles were computed for each CR performed in a year. Most of these carriers (over 50%) had no recordable accidents. The national average for all carriers reviewed in 1988 was 0.46 per million miles; in 1996, 0.50 per million miles. From these data, the percent of all carriers below or above any proposed accident per million mile breakpoint could be established. The breakpoints shown below were determined from consideration of both the national average and the percentage of carriers below and above alternative breakpoints, i.e.:

The Recordable Preventable Accident Rating Scale (total recordable preventable accidents divided by total mileage times 1 million) is:

Satisfactory=less than .3

Conditional=0.3 to 1.0

Unsatisfactory=greater than 1.0

Exceptions to the Recordable Preventable Accident Rating Scale

Single Accident Exception: The accident factor excludes the accident rates for all motor carriers that have only one recordable preventable accident. One accident occurring in 12 months is too isolated an occurrence to allow it to impact the accident factor.

Urban Carriers Exception: Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than a 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and

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normally have higher accident rates. Therefore, the rating does not become *unsatisfactory* for an urban carrier until it exceeds the 2.0 recordable preventable accident rate per million miles.

Small Carrier Exception: Accident rates for small carriers (fewer than 20 drivers) vary to a great extent from one year to the next. Therefore, the lowest "accident factor" rating assigned to a small carrier is *conditional*.

The Factor rating is determined by the following table.

FACTOR #6.—RECORDABLE PREVENTABLE ACCIDENT RATE TABLE

Calculated accident rate	Rating	Rating: urban carriers only
Less than .3	Satisfactory	Satisfactory.
0.3 to 1.0	Conditional	Conditional.
Greater than 1.0 to 2.0	Unsatisfactory	Conditional.
Greater than 2.0 ...	Unsatisfactory	Unsatisfactory.

Factor Ratings

In the methodology, parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called "factors."

The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor.

FACTORS

Factor 1—General=Parts 387 & 390

Factor 2—Driver=Parts 382, 383 & 391

Factor 3—Operational=Parts 392 & 395

Factor 4—Vehicle=Parts 393 & 396

Factor 5—Haz. Mat=Parts 397, 171, 177 & 180

Factor 6—Accident Factor=Recordable Preventable Rate

Factor Ratings are determined as follows:

"Satisfactory"—if the acute and/or critical=0 points

"Conditional"—if the acute and/or critical=1 point

"Unsatisfactory"—if the acute and/or critical=2 or more points

SAFETY RATING

The ratings for the five factors, along with the recordable preventable accident rate for the 12 months prior to the review, are then entered into a rating table which establishes the motor carrier's safety rating.

The FHWA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

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MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or less	Satisfactory.
0	more than 2	Conditional.
1	2 or less	Conditional.
1	more than 2	Unsatisfactory.
2 or more	0 or more	Unsatisfactory.

ANTICIPATED SAFETY RATING

The *anticipated* (emphasis added) safety rating will appear on the CR.

The following appropriate information will appear after the last entry on the CR, MCS-151, Part B.

"It is anticipated the official safety rating from Washington, D.C. will be SATISFACTORY."

Or

"It is anticipated the official safety rating from Washington, D.C. will be CONDITIONAL. The safety rating will become effective thirty days from the date of the CR."

Or

"It is anticipated the official safety rating from Washington, D.C., will be UNSATISFACTORY. The safety rating will become effective thirty days from the date of the CR."

ASSIGNMENT OF RATING/MOTOR CARRIER NOTIFICATION

When the official rating is determined in Washington, D.C., the FHWA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. An anticipated safety rating which is higher than the existing rating becomes effective as soon as the official safety rating from Washington, D.C. is issued. Notification of a *conditional* or *unsatisfactory* rating includes a list of those Parts of the regulations, or recordable preventable accident rate, for which corrective actions must be taken by the motor carrier to improve its overall safety performance.

Motor Carrier Procedural Rights

Under §§385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes*, and to request another review after corrective actions

have been taken. They are the procedural avenues a motor carrier, which believes its safety rating to be in error, may use, and the means to request another review after corrective action has been taken.

Conclusion

The FHWA believes this "safety rating methodology" is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§385.9).

Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

List of Acute and Critical Regulations

- §382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)
- §382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)
- §382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)
- §382.213(b) Using a driver who has used a controlled substance. (acute)
- §382.215 Using a driver who has tested positive for a controlled substance. (acute)
- §382.301(a) Failing to require driver to undergo pre-employment controlled substance testing. (critical)
- §382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances. (critical)
- §382.305(a) Failing to implement a random controlled substances and/or an alcohol testing program. (acute)
- §382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 25 percent of the average number of driver positions. (critical)
- §382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. (critical)
- §382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (acute)
- §382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. (acute)
- §382.503 Driver performing safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by substance abuse professional, as required by §382.605. (critical)
- §382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04. (acute)
- §382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by Part 382, Subpart B. (acute)
- §382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty. (critical)
- §383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license. (critical)
- §383.37(a) Allowing, requiring, permitting, or authorizing an employee with a Commercial Driver's License which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (acute)
- §383.37(b) Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License to operate a commercial motor vehicle. (acute)
- §383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. (acute)
- §387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (acute)
- §387.7(d) Failing to maintain at principal place of business required proof of financial responsibility. (critical)
- §387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. (acute)
- §387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles. (critical)
- §390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers. (critical)
- §390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. (acute)
- §391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)
- §391.11(b)(6) Using a physically unqualified driver. (acute)

- § 391.15(a) Using a disqualified driver. (acute)
- § 391.45(a) Using a driver not medically examined and certified. (critical)
- § 391.45(b) Using a driver not medically examined and certified each 24 months. (critical)
- § 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)
- § 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)
- § 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either "Negative" and, if "Positive", the controlled substances identified. (critical)
- § 391.93(a) Failing to implement a controlled substances testing program. (acute)
- § 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)
- § 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)
- § 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)
- § 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (critical)
- § 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. (critical)
- § 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. (acute)
- § 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage. (acute)
- § 392.5(b)(2) Requiring or permitting a driver who has consumed an intoxicating beverage within 4 hours to operate a motor vehicle. (acute)
- § 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. (critical)
- § 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. (critical)
- § 395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days. (Driving in Alaska.) (critical)
- § 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours. (critical)
- § 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours. (critical)
- § 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)
- § 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days. (critical)
- § 395.8(a) Failing to require driver to make a record of duty status. (critical)
- § 395.8(e) False reports of records of duty status. (critical)
- § 395.8(l) Failing to require driver to forward within 13 days of completion, the original of the record of duty status. (critical)
- § 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months. (critical)
- § 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months. (critical)
- § 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. (critical)
- § 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made. (acute)
- § 396.11(a) Failing to require driver to prepare driver vehicle inspection report. (critical)
- § 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report. (acute)
- § 396.17(a) Using a commercial motor vehicle not periodically inspected. (critical)
- § 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards. (acute)
- § 397.5(a) Failing to ensure a motor vehicle containing Class A or B explosives (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)
- § 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2,

- 1.3) within 5 feet of traveled portion of highway. (critical)
- § 397.7(b) Parking a motor vehicle containing hazardous material(s) within 5 feet of traveled portion of highway or street. (critical)
- § 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials. (critical)
- § 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) with a copy of the rules of Part 397 and/or emergency response instructions. (critical)
- § 397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan. (critical)
- § 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials. (critical)
- § 171.16 Carrier failing to make a written report of an incident involving hazardous materials. (critical)
- § 177.800(a) Failing to instruct a category of employees in hazardous materials regulations. (critical)
- § 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. (critical)
- § 177.817(e) Failing to maintain proper accessibility of shipping papers. (critical)
- § 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded. (critical)
- § 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals. (acute)
- § 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407. (critical)
- § 180.407(c) Failing to periodically test and inspect a cargo tank. (critical)
- § 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407. (critical)
- § 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required. (critical)
- § 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. (critical)

[62 FR 28809, May 28, 1997]

EFFECTIVE DATE NOTE: At 62 FR 28809, May 28, 1997, in part 385, the existing appendix was designated as appendix A, and a new ap-

pendix B was added, effective May 28, 1997 until Nov. 28, 1997.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

Subpart A—Scope of Rules; Definitions

Sec.

- 386.1 Scope of rules in this part.
386.2 Definitions.

Subpart B—Commencement of Proceedings, Pleadings

- 386.11 Commencement of proceedings.
386.12 Complaint.
386.13 Petitions to review and request for hearing: Driver qualification proceedings.
386.14 Replies and request for hearing: Civil forfeiture proceedings.
386.15 [Reserved]
386.16 Action on petitions or replies.
386.17 Intervention.

Subpart C—Compliance and Consent Orders

- 386.21 Compliance order.
386.22 Consent order.
386.23 Content of consent order.

Subpart D—General Rules and Hearings

- 386.31 Service.
386.32 Computation of time.
386.33 Extension of time.
386.34 Official notice.
386.35 Motions.
386.36 Motions to dismiss and motions for a more definite statement.
386.37 Discovery methods.
386.38 Scope of discovery.
386.39 Protective orders.
386.40 Supplementation of responses.
386.41 Stipulations regarding discovery.
386.42 Written interrogatories to parties.
386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.
386.44 Request for admissions.
386.45 Motion to compel discovery.
386.46 Depositions.
386.47 Use of deposition at hearings.
386.48 Medical records and physicians' reports.
386.49 Form of written evidence.
386.50 Appearances and rights of witnesses.
386.51 Amendment and withdrawal of pleadings.
386.52 Appeals from interlocutory rulings.
386.53 Subpoenas, witness fees.